

Honorable Judge Barbara J. Rothstein

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

SIERRA CLUB; and CENTER FOR
ENVIRONMENTAL LAW AND POLICY,)

No. 2: 11-cv-01759-BJR

Plaintiffs,
and)

THIRD AMENDED AND
SUPPLEMENTAL COMPLAINT
SPOKANE TRIBE OF INDIANS

SPOKANE TRIBE OF INDIANS,)

Plaintiff-Intervenor,)

v.)

DENNIS MCLERRAN; GINA
MCCARTHY; and UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY,)

Defendants,
and)

SPOKANE COUNTY: KAISER
ALUMINUM WASHINGTON LLC; and)
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,)

Intervenors.)

Plaintiff-Intervenor, Spokane Tribe of Indians, by and through its counsel of record, Ted Knight, submits this Third Amended and Supplemental Complaint.

THIRD AMENDED AND SUPPLEMENTAL COMPLAINT
PLAINTIFF-INTERVENOR
SPOKANE TRIBE OF INDIANS -1
No. C11-1759-BJR

OFFICE OF THE SPOKANE TRIBAL ATTORNEY
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I. INTRODUCTION

1. The claim asserted in this third supplemental complaint filed by Plaintiff-Intervenor the Spokane Tribe of Indians ("Tribe") is that Defendant EPA's final administrative action in preparing, approving, and filing in this Court "EPA's Plan for Addressing PCBs in the Spokane River" (Dkt. No. 129-1) is arbitrary and capricious, an abuse of discretion, and not in accordance with law. This claim is asserted under the Administrative Procedures Act, 5 U.S.C §§ 701-706, and Plaintiff-Intervenor seeks declaratory relief, injunctive relief, and recovery of litigation expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412.

II. JURISDICTION AND VENUE

2. Plaintiff-Intervenor, the Spokane Tribe of Indians, hereby incorporates by reference ¶¶ 2-3 of Plaintiffs' Sierra Club and Center for Environmental Law and Policy's Second Supplemental Complaint, Docket No. 162.

III. PARTIES

4. Plaintiff-Intervenor, Spokane Tribe of Indians, is a federally recognized Indian Tribe with roughly 2700 Tribal Members. The Tribe's Reservation was established in August of 1877 after the Tribe was forced from its land by the United States government. The Tribe's Reservations' borders are the East Bank of Chamokane Creek, the South Bank of the Spokane River, the West Bank of the Columbia River and the Northern Border is the 48th parallel. The Tribe's ancestral lands as found by the Indian Claims Commission and affirmed by the United States Court of Claims includes the entirety of the Spokane River as it flows through what is now Washington State. Additionally, the Tribe has unquantified water rights with a priority date of 1877 within the Spokane River, which also include a right to water of a quality that can sustain fish and other aquatic life. The Tribe's Reservation is located directly downstream from the City

1 of Spokane and surrounding communities. Fish within the portion of the Spokane River that
2 flows across the Reservation have elevated levels of PCBs that cause them to be harmful to eat.
3 The water of the Spokane River that flows across the Reservation does not meet the Tribe's
4 water quality standards for PCBs. Additionally, the Tribe's membership fish throughout the
5 Spokane River watershed and use the waters for cultural and subsistence uses. Finally, the Tribe
6 is treated in the same manner as a state for purposes of the Clean Water Act, and has EPA
7 approved Water Quality Standards.
8

9
10 5. The Tribe has standing to bring this action. The Tribe's water quality standards
11 are currently not being met. The Tribe's membership cannot safely eat fish and aquatic resources
12 throughout the Spokane River. The relief sought in this lawsuit can redress the Tribe's injuries
13 and protect the Tribe's and its members' interests and resources.

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15 6. The Tribe hereby incorporates by reference Plaintiffs', Sierra Club and Center for
16 Environmental Law and Policy, descriptions of themselves contained in their Complaint at ¶¶ 4-
17 5, Docket No. 162.

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19 7. The Tribe hereby incorporates by reference the Plaintiffs' description of the EPA
20 Defendants contained in their Complaint. (Docket No. 162 at ¶¶ 7-9).

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22 8. Defendant-Intervenor, the State of Washington, Department of Ecology, is the
23 Washington State Agency with delegated authority under the Clean Water Act.

24
25 9. Defendant-Intervenor, Spokane County is a political subdivision of the State of
26 Washington, and also owns the new Spokane County Regional Water Reclamation Facility
27 ("SCRWRF"). SCRWRF discharges PCBs into the Spokane River.
28

10. Defendant-Intervenor, Kaiser Aluminum Washington, LLC, a Delaware Corporation, owns and operates a facility that produces high-quality aluminum products along the Spokane River. Kaiser Aluminum Washington, LLC discharges PCBs into the River.

IV. FACTS

11. The Tribe hereby incorporates by reference Plaintiffs' factual description contained in their Second Supplemental Complaint. (Docket No. 162 at ¶¶ 10-45).

V. CAUSE OF ACTION

12. The Tribe hereby incorporates by reference Plaintiffs' cause of action contained in their Second Supplemental Complaint. (Dkt. No. 162 at ¶¶ 46-48).

VI. RELIEF REQUESTED

Whereof, Plaintiff-Intervenor respectfully requests that this Court grant the following relief:

A. Issue a declaratory judgment that EPA's Plan is arbitrary and capricious, an abuse of discretion, and inconsistent with the law;

B. Vacate and remand EPA's Plan with specific instructions for its reformulation and reissuance;

C. Retain jurisdiction to see EPA's Plan through to finalization of the Spokane River PCB TMDL;

C. Award Plaintiff-Intervenor their litigation expenses, including reasonable attorneys' and expert witness fees, as authorized under EAJA, 28 U.S.C. § 2412; and

D. Award such other relief, as this Court deems appropriate.

1 Respectfully submitted this 24th day of June 2016.

2 By: s/Ted Knight
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing filing was electronically filed with the Clerk of the Court on June 24, 2016, using the Court's electronic filing system, which will send notification of said filing to the attorneys of record that have, as required, registered with the Court's system.

/s/Ted Knight
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